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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/921,323

08/02/2001

Jay Darrell Gillespie

34423/237429

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06/12/2006

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EXAMINER

BOYD, JENNIFER A

ART UNIT

PAPER NUMBER

1771

DATE MAILED: 06/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/921,323	GILLESPIE ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Jennifer A. Boyd	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 24 March 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1 and 4-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 4-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 24, 2006 has been entered. The Applicant's Amendments and Accompanying Remarks, filed March 24, 2006, have been entered and have been carefully considered. No claims have been amended, claims 11 – 28 are cancelled and claims 1 and 4 – 10 are pending. The invention as currently claimed is unpatentable for reasons herein below.

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Declaration under 37 C.F.R. 1.132***

3. The Declaration under 37 CFR 1.132 filed March 24, 2006 is insufficient to overcome the rejection of claims 1 and 4 - 10 based upon Taylor et al. (US 6,737,009) in view of Kent (US 5,885,705) as set forth in the last Office action because: On a basic level, both Kent and Taylor are concerned with meltspun fibers to create two different final products. Additionally, Kent specifically notes that although the fibers of the invention being formed into bulked continuous fibers for purposes of making carpet fibers are emphasized, the fibers of the invention can be

Art Unit: 1771

processed to form fibers for a variety of textile applications. The Examiner submits that it is reasonable to use the teaching of Kent to demonstrate that it would be obvious to one of ordinary skill in the art create a contaminant-filled bicomponent fiber in order to reduce cost while still maintaining a high quality product. Applicant argues that there is no expectation of success of incorporating reclaimed polypropylene into a core of filaments used in a spunbond nonwoven fabric. As stated above, the filaments used in both technologies have one major common denominator: they both are meltspun fibers. Therefore, one of ordinary skill in the art would expect that a contaminant-containing melt-spun filament used in a carpet yarn would have the same problems/concerns, etc. as a contaminant-containing melt-spun filament used in spunbonded fabric. In response to Applicant's argument that the carpet technology of Kent and the spunbonding process of Taylor is nonanalogous art, it has been held that a prior art reference must either be in the field of Applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the Applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, the Examiner acknowledges that the Kent and Taylor patents are directed to two different fields of endeavor namely carpet yarn and spunbonded fabrics, however, Kent is considered to be highly pertinent to the particular problem with which the Applicant is concerned. The Applicant is concerned with reducing production cost while maintaining product quality and the environmental concern of disposal of solid waste (See Specification, page 1, lines 5 - 10). Likewise, Kent is concerned about reducing production cost and as seen in the Examples, Kent is concerned with maintaining quality fiber for end products such as carpet yarn.

***Claim Rejections - 35 USC § 103***

4. Claims 1 and 4 – 10 remains rejected under 35 U.S.C. 103(a) as being unpatentable over Taylor et al. (US 6,737,009) in view of Kent (US 5,885,705). The details of the rejection can be found in paragraph 3 of the previous Office Action dated November 15, 2004. The rejection is maintained.

***Response to Arguments***

5. Applicant's arguments filed March 24, 2006 have been fully considered but they are not persuasive.

It should be noted that Applicant's arguments summarize the contents of the submitted Declaration under 37 CFR 1.132 which is discussed above.

Applicant argues that Kent teaches a contaminant containing polyamide core while the claims specify a reclaimed polypropylene core. It should be noted that the Examiner relies on Kent to teach motivation for incorporating a contaminant containing polymer into the core of a fiber for the purposes of lower cost and has not relied on the reference to teach the type of polymer. Absent any evidence to the contrary, the Examiner submits that the teachings of Kent could be applied Taylor.

***Conclusion***

Art Unit: 1771

6. This is a Request for Continued Examination for Application 09/921,323. The claims have not been amended and the Examiner has maintained the same rejection from the Office Action dated November 15, 2004. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer A. Boyd whose telephone number is 571-272-1473. The examiner can normally be reached on Monday thru Friday (8:30am - 6:00pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1771

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Jennifer Boyd  
June 2, 2006

  
**Ula C. Ruddock**  
Primary Examiner  
Tech Center 1700